

Agenda Item	
	Pledge of Allegiance
A-1	<p>Wishing to be heard during the Open Comment Period was Brad Trahan, 2570 Colleen Street N.E. Mr. Trahan told the Council that his life was changed on January 23, 2003, when his son was diagnosed at age 3 with severe autism. Mr. Trahan said that after seeing the lack of support for children with the disability, he and his wife have founded an organization for helping children with autism and families with autistic children. He said that the disability is now of an epidemic proportion. The subject of autism was featured recently on the Today program on NBC television. Mr. Trahan requested of the City Council that parents and/or therapy facilities with autistic children may call in and request a sign be placed in front to warn traffic and drivers of an autistic child in the neighborhood. Mr. Trahan acquainted the Council with the problems of autistic children and how they are not, many times, aware of their surroundings or responsible for their actions. Mayor Brede was contacted in 2004 as to requests for signs and was told by staff that it has been found that signs do not stop anyone from slowing down and make the parents of autistic children more relaxed about watching their children as closely. Mr. Trahan said it is just as important for autistic signs as those for blind children and requested that the Council place signs warning of autistic children in neighborhoods to help slow traffic and warn drivers.</p>
B-1	<p>President Dennis Hanson called the meeting to order at 7:00 P.M. with the following members present: Councilmembers Pat Carr, Ed Hruska, Marcia Marcoux, Jean McConnell, Sandra Means, Bob Nowicki. Absent: None. Also present: Mayor Ardell F. Brede.</p> <p>President Hanson recognized members of Boy Scout Troop #498 from Mt. Olive Church and Troop #27 from St. John's in the audience.</p>
D-1	Councilmembers Means moved, Hruska seconded, to approve the following consent agenda items.
D-1	Approved the minutes of the February 7, 2005, Council meeting.
D-2	Adopted Resolution No. 057-05 authorizing the Mayor and City Clerk to execute the State Aid Agreement for Air Service Programs at the Rochester International Airport for various forms of Airport advertising.
D-3	<p>Approved the following licenses and miscellaneous activities:</p> <p><u>Dance – Temporary</u> Rochester Police Athletic League – Fundraiser at Graham Arena West – May 21, 2005.</p> <p><u>Gambling – Temporary</u> Interfaith Hospitality Network – Raffle at Rochester Golf and Country Club – June 20, 2005. Church of St. Pius X – Parish Auction at Kennedy Hall – April 16, 2005.</p>

Agenda Item	
	<p>National REGAP Network, Inc. – Raffle at Silver Lake Pavilion – September 17, 2005.</p> <p><u>Heating, Ventilating &amp; Air Conditioning</u> BW Mechanical, Rochester</p> <p><u>On-Sale Liquor – Temporary</u> Church of St. Pius X – Parish Auction at Kennedy Hall – April 16, 2005</p> <p><u>Master Installer</u> Brent A. Werth, Rochester</p> <p><u>Sidewalk – Cement</u> Muehleis Concrete &amp; Masonry, Kasson</p> <p><u>Sound Amplification</u> Rochester Golf &amp; Country Club – Pool Side Event – July 22, 2005 – 7:00 to 11:00 PM Rochester Police Athletic League – Car/Motorcycle Show – East Silver Lake – May 21, 2005 – 9:00 AM to 2:00 PM</p> <p><u>Miscellaneous Activities</u> Brian &amp; Melanie Crum – Family 5k &amp; 3k Run – Bear Creek Park – June 4, 2005 – 7:00 to 11:30 AM SE MN Celiac Support Group – Walk for Research at Silver Lake Paved Walks – May 7, 2005 Rochester Golf &amp; Country Club – Pool Side Event – July 22, 2005 – 7:00 to 11:00 PM Rochester Track Club – Dr. Steven Fetzer 20K run – April 9, 2005 Rochester Police Athletic League - Car/Motorcycle Show – East Silver Lake – May 21, 2005 – 9:00 AM to 2:00 PM</p>
D-4	See at end of D Items.
D-5	Approved the Pawnbroker License for Pawn America Minnesota, LLC at 770 First Avenue S.E. pending receipt of the required building and other permits, departmental approvals and issuance of a Certificate of Occupancy for the new location.
D-6	Adopted Resolution No. 058-05 approving the advertisement for bids for 2005 Season Supply of Washed Sand, Gravel, Crushed Rock, Pea Gravel, Plant Mixed Bituminous, Ready-Mixed Concrete and Cutback Asphalt.
D-7	Approved Accounts Payable in the amount of \$4,400,087.44 and Investment Purchases of \$5,981,116.40.
D-8	See at end of D Items.

Agenda Item	
D-9	Accepted \$100.00 from a citizen for the Rochester Fire Department.
D-10	Adopted Resolution No. 059-05 authorizing the City Clerk to advertise for bids for Project No. M4-24 (J-7728) "Construction of Relief Sanitary Sewer Main to Serve Undeveloped Lands in Cascade Township that are Located East of TH63 North and North of East Circle Drive NE".
D-11	Adopted Resolution No. 060-05 entering into an Environmental Services Contract with URS Engineering, in the amount of \$1,800.00, for Project No. J-7731 "Asbestos and Hazardous Materials at 6420 Bandel Road N.W.".
D-12	Adopted Resolution No. 061-05 engineering into an Engineering Service Agreement with Yaggy-Colby Associates, Inc. in the amount of \$9,500 for detailed design of the storm sewer improvements for Project No. J-7741 "Storm Sewer Along 9 <sup>th</sup> Avenue NW between Civic Center Drive and Cascade Creek".
D-13	Adopted Resolution No. 062-05 approving the execution of the Maintenance Access Easement Agreement between the City and SouthMetro Center VI, LLC , for Apache Mall Shopping Center Resubdivision No. 2.
D-14	Adopted Resolution No. 063-05 approving the execution of the Professional Services Agreement with H.R. Green Company for Final Design Services of Sanitary Sewer Trunk Main Project.  Ayes (7), Nays (0). Motion carried.
D-4	Mayor Brede asked if the Council should consider not transferring the change in Liquor License for Natraj in lieu of recent problems in the neighborhood.  Judy Scherr, City Clerk, noted that the transfer will be lowering the alcohol content of the service and that the problems that existed have been worked out in a meeting between the neighbors and owner. No further action was needed at this time.  Councilmembers Nowicki moved, Hruska seconded, to approve the change from On-Sale Intoxicating Liquor to On-Sale 3.2% Beer and Wine for the Natraj Enterprise LLC at 7 12 <sup>th</sup> Street SE. Ayes (7), Nays (0). Motion carried.
D-8	Mayor Brede acknowledged the work of the Fire and Police Departments and thanked them for their diligence in applying for and getting grants for Homeland Security.  Councilmembers Marcoux moved, Nowicki seconded, to accept the Homeland Security funds in the amount of \$100,000 from the State of Minnesota for the Rochester Fire Department to be used toward Homeland Security initiatives. Ayes (7), Nays (0). Motion carried.  Mayor Brede noted that he has been invited with seven other mayors to attend The Mayor's Institute on City Design in Charleston, South Carolina, March 2 through 4,

Agenda Item	
E-1 & E-2	<p>2005. Former Mayors Chuck Hazama and Chuck Canfield attended the Institute in past years. The Institute matches elected officials with a team of the country's leading design professionals to discuss their cities' critical development issues.</p> <p>A Hearing on Land Use Plan Amendment Petition #04-08 by Alpha Realty Corporation and Alton &amp; Louise Shefelbine to designate land from Low Density Residential and Medium Density Residential to Commercial on property located along the west wide of West Circle Drive, south of Northern Hills Golf Course and north of Valleyhigh Drive NW., and</p> <p>A Hearing on General Development Plan #249 by Alpha Realty Corporation and Alton &amp; Louise Shefelbine on property located along the west wide of West Circle Drive, south of Northern Hills Golf Course and north of Valleyhigh Drive NW.</p> <p>Staff has requested that the hearings be continued to the March 7, 2005, meeting to allow the applicant's representatives to be present.</p> <p>No one wished to be heard at this time.</p> <p>Councilmembers McConnell moved, Marcoux seconded, to continue the hearings on Land Use Plan Amendment Petition #04-08 and General Development Plan #249 by Alpha Realty Corporation and Alton &amp; Louise Shefelbine to the March 7, 2005, Council meeting. Ayes (7), Nays (0). Motion carried.</p>
E-3	<p>A Hearing on Final Plat #05-04, by Brad &amp; Laurie Thatcher and Richard &amp; Lana Schultz, to be known as Forest Hills Sixth located east of TH52, south of 20<sup>th</sup> Street SW and on Edgewood Court SW.</p> <p>Staff recommended that the Final Plat item be continued to the March 7, 2005, Council meeting. This would allow the applicant time to resolve the issue of hydric soils and wetlands on the property.</p> <p>No one wished to be heard at this time.</p> <p>Councilmembers McConnell moved, Marcoux seconded, to continue the hearing for Final Plat #05-04, by Brad &amp; Laurie Thatcher and Richard &amp; Lana Schultz, to be known as Forest Hills Sixth to the March 7, 2005, Council meeting. Ayes (7), Nays (0). Motion carried.</p>
E-4	<p>A Hearing on Vacation Petition #05-02 by Crossroads College to vacate utility easements within Lot 1, Block 1 granted and created on the plat of Minnesota Bible College Addition located along the north side of 20<sup>th</sup> Street SW and along the south side of Mayowood Road SW.</p> <p>Staff recommended that the hearing be continued to the March 21, 2005, Council meeting to allow time for the applicant to provide an executed Development Agreement.</p> <p>No one wished to be heard at this time.</p>

Agenda Item	
E-5	<p>Councilmembers Marcoux moved, Nowicki seconded, to continue the hearing on Vacation Petition #05-02 by Crossroads College to the March 21, 2005, Council meeting. Ayes (7), Nays (0). Motion carried.</p> <p>A Hearing to Consider the Issue of Rental License Suspension, Revocation or the Imposition of a Fine for Housing Code Violations at 817 First Street S.W. owned by Jarett Ruud.</p> <p>Wishing to be heard was Gary Dutton, Building Safety Department. Mr. Dutton said that the Council approved Ordinance 38.125 to provide the necessary tool to address repeated housing code violations. It was hoped that landlords would become more pro-active than re-active. There are approximately 12,000 housing units registered in the City. Mr. Dutton said that the property in question is a single dwelling owned by Jarett Ruud. The home would not allow for more than five unrelated occupants. Mr. Dutton gave a summary of dates of inspection starting with September 14, 2004, and ending with December 9, 2004. The housing registration certificate expired on June 30, 2004. A re-inspection of the property on October 21, 2004, noted several items for correction that were to be completed prior to December 5, 2004. No re-inspection of the property has been requested by the owner; it is the owner's responsibility to schedule inspections and complete corrections.</p> <p>Wishing to be heard was Lonnie Heimer, 902 First Street S.W., Block Captain for First Street S.W. Ms. Heimer indicated that many attempts have been made to contact the owner of the property at 817 First Street S.W. to try to work out some of the issues. There have been three neighborhood watch meetings in which Mr. Ruud was invited but did not attend. All tenants in the home were invited to the meetings as well but did not attend. Ms. Heimer said that only after the City was involved and the hearing with the Rental Housing Complaint Board did Mr. Ruud evict the tenants and clean up the property. She said that Mr. Ruud has given no indication that he is willing to work with the neighbors or keep the property in compliance. Ms. Heimer said that Mr. Ruud had voiced concerns to her that he felt the neighbors were harassing him and his tenants. She said, however, that the history on the property led the neighbors to believe that Mr. Ruud is not willing to address the problems. Ms. Heimer asked that the Council enforce all the ordinances relating to the Building Safety issue. Ms. Heimer also said that the present tenants are fixing up the property in the hope that a day care center can be established there and hopes that any enforcement under the ordinance doesn't affect them in any way.</p> <p>Wishing to be heard was Joan Karrer, 903 First Street SW., also a Block Captain. She said that over the past year there has been more time being put in by staff at Building Safety and the Police Department because of a marked increase in violations and more criminal activities in the area. She said that it is also a detriment to those responsible tenants and landlords in the neighborhood. The property at 817 First Street SW is one property that needs to be addressed. The record speaks for itself in the number of violations and police calls that have been noted. She asked that the Council enforce Housing Code 38.11. She said that</p>

Agenda  
Item

without enforcement of ordinances, the neighborhood problems will continue and will further drive the neighborhoods downhill.

Wishing to be heard was Stephanie Kilen, 2201 Fox Valley Drive S.W., a former resident of the neighborhood. Ms. Kilen said that she lived in the property next door to 817 First Street S.W. for two years and shared a driveway. The deterioration of the property was the reason she moved from the neighborhood as well as the consistent problems with dogs, trash, noise and debris. She said that she had contacted the landlord on numerous occasions to ask his cooperation and was told that the problems were "none of her business". Ms. Kilen said that this is an enforcement issue.

Wishing to be heard was Glenn Faith, 1004 First Street N.W., President of the Kutzky Park Neighborhood Association. He said that the property at 817 First Street S.W. is one of a series of cases for the area. He said that RCO 38.11 has been effect for many years requiring a rental certificate. This property has not been re-certified for many months. Mr. Faith asked that the ordinance be enforced and that the landlord be charged with the highest fine and longest jail time that is possible.

Wishing to be heard was Alex Schrevko, 540 Northern Hills Drive N.E. Mr. Schrevko was a tenant at 817 First Street S.W. with three other individuals. He lived there for one year and moved in January of 2005. He said that they weren't criminals, just leaving trash on the porch. He said that he liked all the neighbors and the Kutzky Park neighborhood is a good idea. He said that he and his family had to read about the drug and grass problems at the house in the newspaper; this was the first indication to him. His family knows him and knows that he doesn't do drugs. He said that they did get a ticket for leaving the trash receptacle out at the curb too long. With six people living in the house, there was a lot of trash and no where to put it. It was left on the porch. No matter where the trash was put, the neighbors complained about it. Animal Control was called about his dog. Blue, the dog, has never hurt anyone and, in fact, the dog played with the neighborhood children. Mr. Schrevko was disappointed that their home was the house mentioned. He said that other houses in the neighborhood had more police calls and violation notices. He said that Mr. Ruud was a very good landlord and helped clean up problems alongside the tenants.

Wishing to be heard was Ryan Johnson, 540 Northern Hills Drive N.E. Mr. Johnson said that there are a lot of people in the Kutzky neighborhood but only met two individuals. He and his roommates played with the kids. There were good intentions on their part. There were some problems but the neighbors could have talked with them. The ticket for the dog was given when the dog wasn't even there.

Wishing to be heard was Jarett Ruud, 12407 Oak Lodge Lane N.E. Mr. Ruud brought copies of all police reports. He said that he tried to take care of any problems as they arose. As far as the rental certificate, he had paid it and forgotten to schedule an inspection. He had the rental certificate for two years prior. The previous tenants were good individuals; there were no drugs involved. Some of the police calls were to 815 First Street S.W. rather than 817 First Street S.W. Mr.

Agenda  
Item

Ruud said that after two calls from Animal Control, he asked the tenants to remove the dog which they did. He apologized for any infractions. When asked if he owns additional rental properties, he said that he has eight others and is not aware of any problems with those houses.

Ron Boose, Director of Building Safety, said that notice is sent to landlords 90 days in advance of the rental certificate expiring and ask that the inspection be scheduled. The fees need to be paid prior to the inspection so that they can be collected. The inspection is made as soon as possible and any corrections that might be outstanding made within the 90 day period. Sending in fees does not automatically renew the rental certificate; the inspection is a part of the process. Mr. Boose said his department was in the process of notifying the City Attorney's Office at the time Mr. Ruud called for re-inspection.

Councilmember Carr said that he felt it was the City's responsibility to make sure the rental certificate was renewed, if the fees had been paid, and not let the issue go for six months.

Councilmember Hruska asked Mr. Ruud how long he has owned rental units and where does he get the rental contracts drawn up. Councilmember Nowicki asked if he was aware of the Crime-Free Rental Housing classes and if he had attended. Councilmember Nowicki urged Mr. Ruud to attend a class. Mr. Ruud said that he has owned units since 1989, he draws up his own contracts and has not attended the Crime-Free classes.

Wishing to be heard was Lonnie Heimer, 902 First Street S.W., Block Captain for First Street S.W. She said that the neighbors did not address nor bring up any other issues than Building Safety issues. She said that this is a chronic situation. When they see trash dumpsters out on the street for three or four days, we live with it for a long time before it is addressed to the property owner. Chronic situations are what have lead to these hearings, not one time incidents. Ms. Heimer said it is the responsibility of the landlord if there is a problem with tenants not complying.

Wishing to be heard was Glenn Faith, 1004 First Street N.W., President of the Kutzky Park Neighborhood Association. He said that he wanted to stress that the issues were with the tenants in 2004 and not the present tenants.

Having no one further wishing to be heard, President Hanson closed the hearing.

Councilmembers Marcoux moved, Hruska seconded, to adopt Resolution No. 064-05 imposing a \$1000 fine and a six-month probation period upon Jarett Ruud. Discussion.

Councilmember Nowicki asked that the motion be amended to include that Jarett Ruud be asked to attend a Crime Free Rental Housing class. Mr. Ruud said that he is already signed up for it.

Councilmembers Marcoux amended the motion, Hruska seconded, to decrease the amount of the fine by \$250 if Jarett Ruud successfully completes the Crime Free

Agenda  
Item

E-6

Multi Housing Training course offered by the Rochester Police Department. Councilmember McConnell said he felt that the probation period of six months was sufficient without imposing a fine. President Hanson said that he would like to instead see the \$1000 fine put into the renovation of the property. Councilmember Carr said he was going to propose a motion which would suspend the rental certificate if the six months probation was violated. This would allow the current tenants to remain in the property. He also said that there were adequate grounds for a suspension but the Council saw no criminal activity.

On the motion to amend, Ayes (5), Nays (2). Motion carried. Councilmembers Carr and McConnell voted nay.

On the original motion, Ayes (4), Nays (3). Motion carried. Councilmembers Carr, McConnell and President Hanson voted nay.

A Hearing on Vacation Petition #04-22 by Mayo Clinic to vacate a part of 2<sup>nd</sup> Avenue SW, lying between 1<sup>st</sup> Street SW and 2<sup>nd</sup> Street SW to facilitate development of a pedestrian plaza.

Wishing to be heard was Bruce Rhode, Division Chair for Facilities Project Services, Mayo Clinic. Mr. Rhode gave a brief history of the project that will allow for a pedestrian plaza to be located between the Mayo and Plummer Buildings. They have been working with the City of Rochester and Sunstone Hotels to develop the plaza that will be an asset for all three entities.

Wishing to be heard was Cynthia McCabe, Mayo Clinic, and Jim Mishnieck, Ellerbee Becket Architectural and Engineering firm, both working on the project. They gave an overview of the plaza and lawn areas designed for the plaza. There is a fire lane which works its way through the site. Raised beds and plantings will complement the area. In response to a question from Mayor Brede, they noted that the surface will be wheelchair friendly.

Wishing to be heard was Bruce Rhode, Division Chair for Facilities Project Services, Mayo Clinic. Mr. Rhode answered a question as to the use of the Plummer Building. He said that there would be no patient areas at the Plummer Building, only clinical functions residing there. He also said that all shuttle buses and loading/unloading of patients would be at the main entrance.

Having no one further wishing to be heard, President Hanson closed the hearing.

Councilmembers McConnell moved, Hruska seconded, to adopt Resolution No. 065-05 approving Vacation Petition #04-22 by Mayo Clinic with five conditions. Discussion.

Mitzi Baker, Planning and Zoning Department, noted that the first sentence of Condition #1 should remain and should not be shown as crossed out on the Request for Council Action.

Ayes (7), Nays (0). Motion carried.

Agenda Item	
E-7	<p>A Hearing on Type III, Phase III, Amendment to Incentive Development #00-35 by Rochester Development, Inc. known as Broadway Plaza on property located at 15 1st Street SE, north of 1<sup>st</sup> Street SW and east of Broadway.</p> <p>Having no one wishing to be heard, President Hanson closed the hearing.</p> <p>Mitzi Baker, Planning and Zoning Department, said that the project went through an incentive development review, they greatly exceed their floor ratio and there was a lot of public review of the project. However, the applicant did not include a sign package. The design, quality of materials and coloring for the tenant signs and tenant box were not appropriate for this building. The ultimate design of the signage is up to the City Council.</p> <p>Councilmembers Marcoux moved, McConnell seconded, to adopt Resolution No. 066-05 approving Amendment to Incentive Development #00-35 by Rochester Development, Inc. known as Broadway Plaza, as to the building identification signs but denying the tenant signage and tenant identification box as proposed. Ayes (7), Nays (0). Motion carried.</p>
E-8	<p>A Hearing on Incentive Development #04-46 by B'nai Israel Synagogue to construct a new synagogue and parking lot north of the alley on property located along the north side of 2<sup>nd</sup> Street SW, along the east of 7<sup>th</sup> Avenue SW and along the south side of 1<sup>st</sup> Street SW.</p> <p>Wishing to be heard was Jeffrey Mintz, President of B'Nai Israel Synagogue. He said that this has been a project that has been a long process. After much debate, it was decided to rebuild in the same spot as the present Synagogue. He said that they feel, as the only Synagogue in Rochester, they can serve the community in Rochester and visitors as well right where they are. Adjacent land has been inquired to construct a larger facility. Mr. Mintz said that he has met with the Kutzky Association about any questions that they had with the expansion. The Kutzky Association voted to approve the project. Mr. Mintz said that they have reviewed the conditions. The only concern they have is the condition for an eight-foot sidewalk the entire length of the no-parking and drop-off lane; the length from Second Street S.W. to the alley. He said that the sidewalk of this length is a lot of concrete and would take away a lot of green space. The traffic needs of the Synagogue would not require a sidewalk of that length. The current drop-off space has been moved away from Second Street S.W. to avoid the traffic issues. There is very little activity during the business week; only Friday evenings and Saturday and Sundays. The architects had proposed a 60-foot drop-off area rather than the entire block. The other conditions are acceptable. Mr. Mintz said that acceptable crabapple trees will be added, the elevations for the trash enclosure will be complied with, and a long-term lease agreement will be provided for the parking. Mr. Mintz also asked for waiver of the Final Plan Review process.</p> <p>Mike Nigbur, Public Works Department, addressed the question of the length of the sidewalk. He said that a typical drop-off area uses a recessed area. However, the Public Works Department said that the drop-off area needs to be lengthened to</p>

Agenda  
Item

provide the required area; other people will be parking there as well as only those dropping off individuals.

Mitzi Baker, Planning Department, said that no request for waiver of the Final Plan Review has been received and filed with an application. She also said that Condition #3 would require the Final Design Plans to be submitted to the Planning Department with additional detail. The Planning Department recommended that the Council not waive the Final Plan Review.

Wishing to be heard was John Cook, Architect with Hammel, Green and Abrahamson (HGA), Minneapolis. He presented a site plan enriched with color and the use of building materials to give the building a warm, inviting atmosphere. Mr. Cook took the Council through a layout of the building as it will be erected. Mr. Cook said that if the Final Plan Review is removed, the process will be shortened by eight weeks. They are looking for a September 2006 start.

Wishing to be heard was Hal Henderson, HGA, Rochester. He said that there has been considerable communication with the Planning Department in regard to the Final Plan Process. Mr. Henderson said that the Planning Commission meeting in January it was also requested to waive the Final Plan Review. When the fund raising process goes into place, the final plan has to be completed so that contributors can determine what the Synagogue will be designed as. The site plan that was submitted was very detailed. Mr. Henderson also said that the sidewalks should only be eight feet in length and not the entire block.

Wishing to be heard was Stephanie Kilen, 2201 Fox Valley Drive S.W. Ms. Kilen was formerly a resident of Kutzky Neighborhood and still works with the long-term planning and revitalization effort for the neighborhood. She said that the Synagogue is a beautiful project. There is still a lingering concern about the Incentive Development Process. The process is more detailed because the project does not fit the usual standard. She asked questions about the exterior colors of the building, the signage, the ornamental trees and said that the sidewalk a full block would be a lot of visual concrete.

Wishing to be heard was Andy Masterpole, 1242 Second Street S.W. He was speaking as a member of the CUDE (Committee on Urban Design and Environment) and a member of the KPNA (Kutzky Park Neighborhood Association). He said that as a neighborhood they could not support the block-long drop-off. He said that the developers looked into saving two large burr-oak trees on the property by hiring a forester. He said that this is a perfect example of why the City should develop a tree preservation ordinance. Trees add to cleaner air, conservation and value to land. He said that the neighborhood definitely supports the project. It is an example of why the process is set up as a two-step process. The Incentive Development does not specify the detail needed.

Wishing to be heard was Glenn Faith, 1004 First Street N.W. Mr. Faith said that the Kutzky Neighborhood Association unanimously endorses the project. He agreed that the City badly needs a tree ordinance. He said the less sidewalk the

Agenda Item	
E-9	<p>better. Mr. Faith asked that the ordinance be more closely looked at in regard to the screening of the parking lot to make sure that the criteria are met.</p> <p>Having no one further wishing to be heard, President Hanson closed the hearing.</p> <p>Mitzi Baker, Planning Department, read the criteria under Ordinance 60.532, subd. 6, to provide the Council the criteria for their consideration if they moved to waive the Final Plan Review Process.</p> <p>Councilmember Nowicki said that he would be in favor of approving a 60-foot by 8-foot drop-off area instead of running the sidewalk the length of the block. This would keep the corner from Second Street free of parked cars, pedestrian drop-off and congestion. Terry Adkins, City Attorney, suggested the recommended change read, under Condition #3 (2): "The sidewalk abutting the drop-off area shall be a minimum eight feet in width and 60 feet in length. The entire frontage from Second Street S.W., to the alley shall be designated for "No Parking/Drop-Off Lane Only."</p> <p>Regarding waiver of the Final Plan Review Process, Councilmembers McConnell and Hruska said that the applicant has covered the criteria needed for waiver. Councilmember Marcoux said that in the staff recommendations the main reason for not waiving the Final Plan Review Process was that Condition #3 was not completed. She asked Mitzi Baker, Planning Department, if the change in Condition #3 would satisfy the criteria. Ms. Baker said that the change would meet the sidewalk criteria but the applicant will need to provide them a copy of the agreement needed for the long-term parking lease.</p> <p>Wishing to be heard was Jeffrey Mintz, President of B'Nai Israel Synagogue, saying that they are capable of creating a lease for whatever term is required for parking.</p> <p>Wishing to be heard was Bruce Edwards, 811 Fox Pointe Lane, the owner of the property to be used for parking. The property consists of a building that was used by Mayo Clinic for a hospice and is not rented for parking. The goal is to find a tenant who would use the building Monday through Friday, 8 AM to 5 PM, and provide parking for the Synagogue nights and weekends. They will be happy to work with the Synagogue to find a tenant that would allow them to have parking for the long-term. He later said that if a 15-year lease would satisfy the Council, he would provide the long-term parking for that length of time unless they find alternative space with a long term.</p> <p>Wishing to be heard was Glenn Faith, 1004 First Street N.W. He said that that the Council should follow the ordinance.</p> <p>Councilmembers Hruska moved, seconded, to adopt Resolution No. 067-05 approving Incentive Development #04-46 by B'nai Israel Synagogue with six conditions including the amended Condition #3 and waiving the Final Plan Review. Ayes (6), Nays (1). Motion carried. Councilmember Marcoux voted nay.</p> <p>A Hearing on Preliminary Plat #04-49 to be known as Century Hills Ninth Subdivision by Payne Company and also Design Modification #05-01 on property</p>

Agenda Item	
	<p>located east of East Circle Drive, north of Silver Creek Road NE and south of Century Valley Road NE.</p> <p>Wishing to be heard was Wade DuMond, Yaggy-Colby, representing the developer. Mr. DuMond noted agreement with all conditions with the exception of Condition #3. He has met with the Public Works Department on the mid-block pedestrian connection to discuss other alternatives such as the connection between the upper and lower cul-de-sacs. He was unable to finalize a preliminary grading plan prior to the meeting. There is vertical elevation of 26 feet between the two cul-de-sacs. They are asking for that design modification be granted because of the difference in elevation between the two roads.</p> <p>Mike Nigbur, Public Works Department, said that the condition should be left in and could be waived at some future date by the City Engineer if the information is forthcoming. Mr. DuMond said he would work with the Public Works Department as it was important that the project be approved at the meeting this evening.</p> <p>Having no one further wishing to be heard, President Hanson closed the hearing.</p> <p>Terry Adkins, City Attorney, suggested language for Condition #3 to read: "Provide a mid-block pedestrian connection between Stone Park Drive N.E. and Century Knoll Lane N.E. <u>unless this requirement is waived by the City Engineer.</u>"</p> <p>Councilmembers Nowicki moved, Hruska seconded, to approve Preliminary Plat #04-49 to be known as Century Hills Ninth Subdivision by Payne Company and also Design Modification #05-01 with five conditions including the change in Condition #3 as recommended by the City Attorney and instructed the City Attorney to provide Findings of Fact, Conclusions of Law, and Order. Ayes (7), Nays (0). Motion carried.</p>
E-10	<p>A Hearing on Text Amendment #05-01 initiated by the Rochester Planning and Zoning Commission to modify sign regulations applying to Residential Development Signs and proposes amending Sections 63.222 and 63.226 of the Rochester Zoning Ordinance and Land Development Manual.</p> <p>Having no one wishing to be heard, President Hanson closed the hearing.</p> <p>Councilmembers Marcoux moved, McConnell seconded, to approve Text Amendment #05-01 initiated by the Rochester Planning and Zoning Commission and instructed the City Attorney to prepare the required ordinance for adoption. Ayes (7), Nays (0). Motion carried.</p>
E-11	<p>A Hearing on Text Amendment #05-02 initiated by the Rochester Planning and Zoning Commission to amend Section 61.222 of the Rochester Zoning Ordinance and Land Development Manual to provide clarification of the criteria applicable to a Type I Land Subdivision Permit.</p> <p>Having no one wishing to be heard, President Hanson closed the hearing.</p>

Agenda Item	
E-12	<p data-bbox="355 344 1421 474">Councilmembers Hruska moved, Marcoux seconded, to approve Text Amendment #05-02 initiated by the Rochester Planning and Zoning Commission and instructed the City Attorney to prepare the required ordinance for adoption. Ayes (7), Nays (0). Motion carried.</p> <p data-bbox="355 512 1370 575">A Continued Hearing to Determine Adequate Public Facilities for Pebble Creek Final Plat #03-48.</p> <p data-bbox="355 613 1429 1982">Wishing to be heard was Ken Moen, Attorney representing the applicant, Pebble Creek. Mr. Moen first reviewed the order of events from October 2004 regarding the development. At the February 7, 2005, meeting, Mr. Moen had proposed Findings of Fact and Order based on the October 4, 2004, meeting. The proposal is for a 16 acre plat of Pebble Creek. Mr. Moen had nine findings relating to Items A, B, C, D, and E. Item A, Parkland dedication, the applicant agrees to. Item B, E911 Address and GIS Impact fees, applicant agrees with. Item D, city/owner contract is agreed to. Item E, construction of temporary turnaround is also agreed with. Item C, and the reason for the public hearing, is to determine the adequacy of public facilities. It is the decision of the Council to determine if the public facilities are adequate. David Morrill, McGhie &amp; Betts, is available to respond to a traffic study by Benshoof &amp; Associates. Mr. Moen said that the study shows that the 16 acre development of Pebble Creek will not hinder capacity of traffic such that the development should not be approved. A memo from Richard Freese, dated February 18, 2005, shows that, given the agreement that is made in the city/owner contract and the contribution and construction agreement, there is not a fact issue about the adequacy of public facilities for this 16-acre plat. The study by Benshoof &amp; Associates shows that the facilities are adequate along with the nine points in the Richard Freese memo. Pebble Creek, LLC has complied with the requirements. Mr. Moen said that the 16 acres is just a small portion of the larger area of future development and that it is the intention of Pebble Creek, LLC that, once development is started, they will be back before the Council working out the details of an overall development agreement. The Order of October 4, 2004, from the Council says that they do not have to have an overall agreement for the concept. Discussions have been entered into with the Public Works Department and have received a draft of a contribution agreement and city/owner contract. After making corrections, Mr. Moen returned the signed agreement today to the Public Works Department. He then went through the changes to the construction and contribution agreements that they agree to do. He understood that these are acceptable. One of the changes was the agreement to improve the roadway on the west side of 60<sup>th</sup> Avenue to include a 12-foot travel lane with a 6-foot paved shoulder. The other side of the roadway, Bigelow, was required to do a contribution at a low rate. If Pebble Creek does an "in lieu of" contribution they would be satisfied. Mr. Moen said that the city/owner agreement proposed by the City has been signed with two exceptions. The capacity charge has been eliminated based on the traffic study together with the fact that Bigelow, using the same roadway, was not charged the same capacity charge. Pebble Creek TID residential area was charged \$8700 per acre as opposed to Bigelow being charged \$1900 per acre across the street. The TID district has not yet been adopted and two areas across the street from each other being charged differently is totally inequitable. He asked the City to allow them to start on the 16 acre parcel and then come back to the City</p>

Agenda  
Item

and negotiate a development agreement on the remainder of the project. The other change in the agreement made was the elimination of the final plat approval. That acts as if the matter has not come to the Council before when in fact the October 4, 2004, order was before the council for the plat.

Mike Nigbur, Public Works Department, said that Pebble Creek has taken out the options and have said only what they will provide without looking at the entire area and what needs to be done. They have said that they will fix their side of the street but in reality only one side of the street cannot be fixed and made adequate. The substandard street policy requires that the roadway have two complete 12-foot lanes and two complete 6-foot paved shoulders. Improvement on only one side does not create a standard roadway. Bigelow has provided a contribution agreement partly in work and partly in contribution to be used toward 60<sup>th</sup> Avenue. Ken Moen, Attorney, told Mr. Nigbur that they would coordinate to do their side of the street when the other side is done. A contribution of \$80 per linear foot is not acceptable when Pebble Creek can do the work for \$15.00. The contribution for Bigelow is \$31.95 per linear foot; Mr. Nigbur explained that the policy has changed since Bigelow signed the development agreement. The new rate, \$80 per linear foot, is being paid by all developers at this time. The Kingsbury District was different in many ways and was in place prior to the current policies. Mr. Nigbur said that until the roadway is either constructed in full or a contribution agreement is signed, the public facilities are not adequate and the plat cannot move forward. There are five conditions that must be met.

Phil Wheeler, Planning Director, said that the Planning Department has not had a chance to review any of the materials that were completed prior to the hearing this evening. As far as the Planning Department is aware, the Preliminary Plat conditions of approval involving the parkland dedication requirements, the addressing and GIS impact fees, etc. , have not been fulfilled.

Steve Kvenvold, City Administrator, said that the matter of Pebble Creek was before the Council on February 7, 2005, and had some last minute introduction of information at that time which caused the matter to be continued to the present meeting. Today, materials have come at the last minute again. Staff cannot be expected to have all the answers when they have not had a chance to review any of the changes or proposals.

Terry Adkins, City Attorney, said that the October 4, 2004, Findings provided for a 53-acre parcel of land, not just 16 acres. The Findings on the 53-acre parcel say that a development agreement is required.

Wishing to be heard was Julie Leitzen, Pebble Creek, LLC, 604 11<sup>th</sup> Avenue N.W. Ms. Leitzen said that the final plat was 16 acres and that was what the Council voted on. Terry Adkins, City Attorney, said that when a final plat is applied for, the conditions of approval imposed on the preliminary plat must have been satisfied. The final plat is a mechanical process. The final plat cannot change that what the preliminary plat was approved upon. Ms. Leitzen asked if phasing requires a development agreement before you can approve a final plat, why was the final plat

Agenda  
Item

approved. Terry Adkins, City Attorney, responded that several city ordinances require a development agreement before phasing can occur.

Councilmember Marcoux said that the Infrastructure Task Force spent a lot of time on the issue. A presentation was given and the Council adopted policy. The policies have already been put in place and used. She said that she understood that each of the districts would be somewhat different and will have different impacts in it. The Pebble Creek development, 16 acres, is a small part of the entire development. What is done or not done here will be a step for the future. Councilmember Marcoux said that we should stay consistent with what we have already done and adopt the City Attorney's Findings Of Fact.

Wishing to be heard was Bob DeWitz, Western Walls, 604 11<sup>th</sup> Avenue N.W. He said that in the previous 50 subdivisions that he built, costs were consistent across the board. No one paid three or four times double what another developer paid. He said that he agrees to pay everything the east side of the road (Bigelow development) has paid.

Steve Kvenvold, City Administrator, said that he agrees there are differences. He used the Highway 63 project area as an example saying that if Mills Fleet Farm builds in the area, they will be paying an enormous fee; Menards did not have to pay anything. Depending on when development occurred, there are enormous differences.

Councilmember Carr suggested that the Council could establish a fair and equitable rate at this time by taking what Bigelow Development paid x-number of years ago, multiply the capacity charges over those years, add it to what was paid and that would be the exact equal share for Pebble Creek today.


Phil Wheeler, Planning Department Director, said that whenever a public body starts charging for something, like addressing charges, someone in the past was treated better than someone in the future. This is what the Council did with the capacity charges of the TID; we cannot afford the infrastructure costs with taxpayer dollars. Mr. Wheeler said that because this is development-related matter, the 60-day rule may be in effect.

Having no one further wishing to be heard, President Hanson closed the hearing.

Councilmembers Marcoux moved, Hruska seconded, to adopt the Findings of Fact, Conclusions of Law, and Order from the City Attorney that the developer of Pebble Creek has not complied with all the conditions of approval and the developer is required to either make the inadequate public facilities adequate or voluntarily enter into a development agreement concerning those facilities and the developer is required to enter into a development agreement to accomplish a phased-in development. Ayes (5), Nays (2). Motion carried. Councilmembers Carr and McConnell voted nay.

RECORD OF OFFICIAL PROCEEDINGS OF THE COMMON COUNCIL  
CITY OF ROCHESTER, MINNESOTA  
Regular Adjourned Meeting No. 5 – February 23, 2005

7298

Agenda Item	
G-2a	An Ordinance Amending and Reenacting Clause C of Subdivision 2 of Section 63.222 and Section 63.226 of the Rochester Code of Ordinances, Relating to Residential Development Signs, was given a first reading.
G-2b	An Ordinance Amending and Reenacting Section 61.222 of the Rochester Code of Ordinances, Relating to the Land Division Process, was given a first reading.
J-1	Having no further business, Councilmembers Nowicki moved, Carr seconded, to recess the meeting to 4:00 P.M. on March 7, 2005, to canvass the results of the March 1, 2005, Primary Election for First Ward Councilmember. Ayes (7), Nays (0). Motion carried.
	<div data-bbox="812 735 1412 861"> _____ City Clerk</div>